



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

99658

**NOTICE OF POTENTIAL LIABILITY**  
**AND OFFER TO NEGOTIATE FOR REMOVAL ACTION**  
**URGENT LEGAL MATTER -- PROMPT REPLY NECESSARY**  
**CERTIFIED MAIL: RETURN RECEIPT REQUESTED**

MAR 19 1992

Congoleum Coporation  
c/o Mark M. Wilcox, Esquire  
Drinker Biddle & Reath  
1100 Philadelphia National Bank Bldg.  
Philadelphia, PA 19107

**Re: Delaware Sand and Gravel Superfund Site,  
New Castle, Delaware**

Dear Mr. Wilcox:

This letter confirms notification of potential liability, as defined by Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607(a), as amended (CERCLA), that you or your company may incur or may have incurred with respect to the above-referenced Site. This letter also notifies you or your company of forthcoming removal activities at the site which you or your company are being asked to perform or finance at a later date.

**BACKGROUND**

CERCLA, more commonly known as Superfund, was enacted in 1980, reauthorized and amended in 1986, and reauthorized again in 1990. CERCLA has several key objectives, including setting priorities for cleanup of the worst hazardous sites in the country, and determining the parties potentially responsible for investigating, cleaning up or paying the costs of cleaning up such hazardous sites. These parties are referred to as "potentially responsible parties" or "PRPs".

On September 8, 1983, the United States Environmental Protection Agency ("EPA") included the Site on the National Priorities List ("NPL"), a list of the most serious uncontrolled or abandoned sites at which releases of hazardous substances have occurred or may occur.

**NOTICE OF POTENTIAL LIABILITY**

The United States Environmental Protection Agency (EPA) has documented the release or threatened release of hazardous substances, pollutants, or contaminants at the above-referenced Site. EPA has spent, or is considering spending, public funds on

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actions to investigate and control such releases or threatened releases at the Site. Unless EPA reaches an agreement under which a potentially responsible party (PRP) or parties will properly perform or finance such actions, EPA may perform these actions pursuant to Section 104 of CERCLA.

Under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a), Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973 (RCRA), and other laws, PRPs may be obligated to implement response actions deemed necessary by EPA to protect health, welfare or the environment, and may be liable for all costs incurred by the government in responding to any release or threatened release at the Site. Such actions and costs may include, but are not limited to, expenditures for investigations, planning, response, oversight, and enforcement activities. In addition, PRPs may be liable for damages to natural resources. EPA may issue an administrative order pursuant to Section 106(a) of CERCLA to require PRPs to commence cleanup activities. Failure to comply with an administrative order issued under Section 106(a) of CERCLA may result in a fine of up to \$25,000 per day, under Section 106(b) of CERCLA, and/or imposition of treble damages, under Section 107(c)(3).

EPA has evaluated information in connection with the investigation of the Site. Based on this information, EPA believes that you may be a PRP with respect to this Site. PRPs under CERCLA include current owners and operators of the Site, owners and operators at the time of disposal, as well as persons who arranged for disposal or treatment of hazardous substances sent to the Site, or persons who accepted hazardous substances for transport to the Site. By this letter, EPA notifies you [or your company] of your potential liability with regard to this matter and encourages you to voluntarily perform or finance those response activities that EPA determines are necessary at the Site.

#### **SITE RESPONSE ACTIVITIES**

At present, EPA is planning to conduct the following activities at the Site:

- 1) Remove all drums and containers from a portion of the Site known as the Drum Disposal Area;
- 2) Identify, segregate and dispose of materials removed from the Drum Disposal Area including measures that will consider reuse or recycling of appropriate materials, means to destroy contaminants and measures to prevent the spread of pollution to the maximum extent practicable;
- 3) Remove all hazardous materials removed from the Drum Disposal Area in accordance with the intent of item 2) above;

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4) Remove and properly dispose of, or treat contaminated water as necessary;

5) Cap the excavated area to prevent infiltration of stormwater into the Drum Disposal Area.

#### DECISION NOT TO USE SPECIAL NOTICE

Under CERCLA Section 122(e), 42 U.S.C. § 9622(e), EPA has the discretionary authority to invoke special notice procedures to negotiate formally the terms of an agreement between EPA and PRPs to conduct or finance response activities. Use of these special notice procedures triggers a moratorium on certain EPA activities at the site while formal negotiations between EPA and the PRP or PRPs are conducted.

In this case, EPA has decided not to invoke the Section 122(e) special notice procedures. It is EPA's policy not to use the special notice procedures for removals unless there is a 6-month planning lead time after the decision to respond and prior to the initiation of the action. Since the planning lead time prior to the initiation of this response action is less than 6 months, special notice procedures will not be used.

#### INFORMATION TO ASSIST RESPONSIBLE PARTIES

EPA encourages good faith negotiations between PRPs and EPA, and among PRPs. To assist PRPs in preparing a proposal and in negotiating with EPA concerning this matter, EPA is providing the following information as attachments to this letter:

1. A list of names and addresses of PRPs to whom this notification is being sent. This list represents EPA's preliminary findings on the identities of the PRPs. Inclusion on, or exclusion from, the list does not constitute a final determination by EPA concerning the liability of any party for the release of hazardous substances at the Site.
2. A fact sheet that describes the Site.

#### PRP STEERING COMMITTEE

A PRP Steering Committee has already been formed for this Site. EPA recommends that all PRPs contact Richard D. Kirk, Esquire, Morris, James, Hitchens & Williams, 222 Delaware Avenue, Wilmington, Delaware 19889, the Chair of the Steering Committee, who is responsible for representing the group's interests. A manageable group of PRPs is critical for successful, expeditious, and efficient negotiations with EPA. Alternatively, we encourage each PRP to select one person from its company or organization who will present its interests.

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### ADMINISTRATIVE RECORD

Pursuant to CERCLA Section 113(k), 42 U.S.C. § 9613(k), EPA will establish an administrative record that contains documents that form the basis of EPA's decision on the selection of a response action for a Site. The administrative record files, which contain the documents related to the response action selected for this Site, will be available to the public for inspection and comment. The primary location is the EPA Regional office located at 841 Chestnut Building, Philadelphia, PA 19107.

### PRP RESPONSE AND EPA CONTACT

You are encouraged to contact EPA within (5) five calendar days of receipt of this letter to advise as to whether or not you or your company intend to enter into the Administrative Order on Consent which is enclosed here. If you intend to participate in this Administrative Order on Consent, the enclosed Order must be executed by you and returned to EPA on or before April 15, 1992. If EPA does not receive a timely response, EPA will assume you do not wish to negotiate a resolution of your liabilities in connection with the response and that you have declined any involvement in performing the response activities. You may be held liable under Section 107 of CERCLA for the cost of the response activities EPA performs at the Site and for any damages to natural resources.

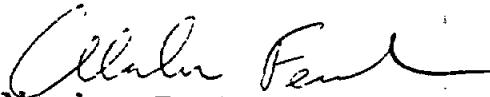
The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be and cannot be relied upon as final EPA positions on any matter set forth herein. Your response to this notice letter should be sent to:

Christopher P. Thomas, On-Scene Coordinator  
U.S. Environmental Protection Agency (3HW33)  
Removal Enforcement Section  
841 Chestnut Building  
Philadelphia, PA 19107  
(215) 597-4458

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If you or your attorney have any questions pertaining to this matter, please direct them to Mr. Thomas, referred to above, or Maria Parisi Vickers, Senior Assistant Regional Counsel, at (215) 597-9387.

Sincerely,



Abraham Ferdas,  
Associate Division Director for  
Superfund Programs  
Hazardous Waste Management Division

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt Fee will provide you the signature of the person delivered to and the date of delivery.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address  
2. ☐ Restricted Delivery

Consult postmaster for fee.

**3. Article Addressed to:**

Congoleum Corporation  
c/o Mark M. Wilcox, Esquire  
Drinker Biddle & Reath  
1100 Philadelphia National  
Bank Bldg.  
Philadelphia, PA 19107

**4a. Article Number**

P 097 489 814

**4b. Service Type**

- ☐ Registered ☐ Insured  
☐ Certified ☐ COD  
☐ Express Mail ☐ Return Receipt for Merchandise

**7. Date of Delivery**

8/23/92

**5. Signature (Addressee)****8. Addressee's Address (Only if requested and fee is paid)****6. Signature (Agent)**

*[Signature]*

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PS Form 3811, November 1990 \*U.S. GPO: 1991-287-066

DOMESTIC RETURN RECEIPT